

Property insight

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RICS Blue Book - 5th Edition

The RICS Blue Book was re-launched last year and October 2011 saw the publication of the 5th edition. Tenancy and service charge management now have their own chapters.

ARMA has welcomed the inclusion of residential long leasehold management. The book is a collaborative work with leaders from ARMA, IRPM, NFOPP and RICS all contributing. The Real Estate Agency Code replaces the Property Standards Consumer Charter, the 12 guiding principles of which remain unchanged in ethos, setting out the ethical and professional standards that must be upheld by members.

The four guiding and international principles promoted by the book are:

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
3. To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
4. Not to discriminate unfairly in any dealings.

Amongst the considerations of ethical behaviours, **an agent must have due regard to the potential vulnerability of an individual and take steps to ensure that they are not disadvantaged.** One of note that as agents we encounter regularly are language barriers. **arim** has a register of foreign language speakers within the business that can help some residents who are struggling to understand the rights and obligations of their tenure. **arim** has also used translation services to assist residents from time to time. The challenge for managers is to consider how we encourage residents to let us know that this is an issue for them. Before taking punitive action against a tenant, landlords and agents would be wise to ensure that every effort has been made to



communicate with tenants that may have very limited English. Where the nature of a breach of terms is serious enough to result in action for possession, then efforts should be made to arrange for a communication in the tenants first language that this is the case. The Courts may not look too kindly on a case where this is not in evidence.

Extensive guidance is provided on all aspects of letting and managing residential property and client monies throughout mainland UK and Northern Ireland.

Chapter 6 brings together a series of pieces of **legislation that have changed the way we let and manage property in recent years. This includes clear guidance on the meaning and impact of the Housing Health and Safety Rating System;** the rules for letting HMOs and how the classification varies between England, Scotland, Wales and Northern Ireland. The oft quoted 'duty of care' can be tricky to quantify when managing tenants' expectations and applies to unequivocal regulations, such as The Gas Safety (Installation & Use) Regulations 1998 as well as using best endeavours to achieve the best outcome for a client when agreeing transactions.

A recurring theme throughout the guide is the obligation to keep records and evidence of all transactions, potential transactions, incidents and day to day seemingly innocuous occurrences. Records are expected to be retained for 6 years.

As members of RICS and ARMA, the Blue Book is the principle document that frames how we manage property on a day to day basis. The Blue Book is as clear and unambiguous as anyone engaged in property management, whether as owner or manager, could wish for. **a**

Increasing concerns on Carbon Monoxide Poisoning



Carbon monoxide (CO) is a colourless, odourless, tasteless, poisonous gas produced by incomplete burning of carbon-based fuels, including gas, oil, wood and coal. Carbon-based fuels are safe to use. It is only when the fuel does not burn properly that excess CO is produced. When CO enters the body, it prevents the blood from bringing oxygen to cells, tissues, and organs.

You can't see it, taste it or smell it but CO can kill quickly without warning. According to the Health & Safety Executive (HSE) every year around 15 people die from CO poisoning caused by gas appliances and flues that have not been properly installed, maintained or that are poorly ventilated. Levels that do not kill can cause serious harm to health if breathed in over a long period. In extreme cases paralysis and brain damage can be caused as a result of prolonged exposure to CO. **Increasing public understanding of the risks of CO poisoning and taking sensible precautions could dramatically reduce this risk.**

Whilst this is not yet a legal requirement, **the HSE strongly recommends the use of CO detectors as one useful precaution to give tenants advance warning of CO in the property.** **arim** can arrange this for you at the same time as the gas safety check is carried out. Please contact your Client Services Manager if you wish to discuss further. **a**



Housing Benefit – The Clawback

Changes to the way that Housing Benefit is awarded are underway with many landlords and tenants concerned that rental obligations may not remain manageable. Indeed, in certain areas of the UK, the wider tenant profile may find it difficult to meet the rent and some landlords may find rental values depressed.

This is adding to the daily articles that we see commenting on the precarious security of housing for many, yet still fails to address the inequitable nature of how payments are made to agents/landlords and clawed back from them. Regardless of whether the tenant is claiming Local Housing Allowance (LHA) or Housing Benefit (HB), it appears we have a lose/lose situation, which is disturbing for landlords and tenants alike.

Following an earlier pilot scheme, the LHA was rolled out across all local authorities in April 2008. **Many landlords expressed concerns around the withdrawal of automatic direct payments to landlords as a standard or optional practice.** Overall, **arim's** clients have not been adversely affected by this change, although we acknowledge other landlords have had difficulties, especially in regions where there is widespread hardship and poverty. It remains an option for the landlord to request direct payment once arrears of rent reach two months. For small landlords, this can mean the difference between making or breaking loan covenants.

Far better on the face of it to receive the HB directly. Or is it? It's worth bearing in mind that local authorities can come back at anytime, long after a tenant has gone, and make a claim for over payment against the person or body to whom payments were made, often the managing agent. Accurate records are critical if such a over payment claim is to be defended. From the agents perspective, the same applies to the landlord client. Most agents ensure that there is appropriate indemnity cover in the terms of engagement with landlords, nonetheless, the steady stream of cases continues where the landlord defaults on mortgage payments with the result that the portfolio finds its way into the hands of receivers.

In particular for short term management, this poses a dilemma for agent, receiver and lender on the 'to accept or not accept' question. A perennial dilemma for many, some small landlords and a few larger ones have opted to protect themselves by refusing to accept HB payments from local authorities. Rents accepted in good faith can later be demanded back, with seemingly few occasions where this is not enforceable by the local authority.

The challenge for all, whether landlord, lender, receiver or agent is whether to accept the payments direct, with greater certainty of income to settle costs that unavoidably arise, and live with the risk that at anytime in the following six years, some or all of the payments may be demanded back.



On what grounds can the local authority demand the payment? We all know it happens, but untangling the appropriate functioning legislation is a fine art. The regulations changed in 2006, which are intended to make it more difficult to recover overpayment from a landlord and should instead be recovered from 'the person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made.'

In our experience as agents, most commonly, clawbacks are demanded under the following circumstances:

- The tenant has left or abandoned the property and HB has been paid for a period beyond their occupancy; irrespective of whether the tenant has a liability under notice or a fixed term to pay. Once gone, the best advice is not to accept any HB for that period and to alert the local authority to the change.
- The tenant has been in care or away from the property for a temporary period and this becomes permanent. The 'temporary' period is commonly up to 52 weeks.

- The tenant is convicted of a criminal offence and is in prison. The claim can be paid for up to 52 weeks pre conviction, provided the individual is likely to be home within 52 weeks. Upon conviction and for shorter sentences, usually up to 13 weeks, HB will often continue to meet the claim, ensuring a home for the individual upon their release.
- The tenant has died. The entitlement to receive HB ceases upon the tenant's death. Clearing the property and getting it back for re-let can prove tricky and claims for rent will need to be made against the estate. However, in these circumstances, it's unlikely to be successful.
- The tenant has made a false claim.

The last scenario is the one which will allow a landlord or agent to reject a claim for a clawback unless there are circumstances under which it is thought likely that the receiving agent/landlord knew of the fraud. A typical example would be a tenant receiving full HB and yet clearly in paid employment or having a lodger that provides an income.

Fraudulent claims are rare, although in the past, our suspicions have been raised by tenants apparently in receipt of HB that seem to be on an eternal holiday. In these instances, our practice is to alert the local authority. Although there is the short term pain of the claim being stopped, it protects our clients from a successful clawback on the basis that we have been negligent in reporting our suspicions.

Our biggest challenge is cases that are in receivership. Every effort is made to maintain the cashflow and to ensure that the new owner, usually acquiring the property through auction, has an accurate opening balance. The matter of HB remains a thorny one. Despite a practice that includes 4 weekly consecutive written communications to the local authority seeking confirmation that all receipts are 'safe', there is no protection from clawbacks for up to 6 years, even where we are advised that the claim settlement is in order. Certain local authorities are notably more effective than others. Outside of London, we often struggle to get any reply.

If you have any queries, please contact your Client Services Manager [a](#)

Consulting on Council Tax

Communities and Local Government (CLG) Secretary Eric Pickles has published a consultation paper called Technical reforms of council tax. This details a series of measures with the purpose of enabling local authorities to freeze and reduce council tax bills for "ordinary families".



Proposals include:

- Allowing local authorities to remove council tax relief on second homes and empty homes. Second homes currently receive a 10 to 50 per cent discount with a range of discounts of up to 100 per cent for empty homes.
- Where banks or building societies repossess an empty home they will be liable for the council tax on that property.

This will have an impact on many of our clients so **arim** will ensure this is monitored and all clients are kept up to date on the consultation.

The paper also consults on the empty homes premium for long-term properties announced by ministers in September. There are no plans to change the rules on council tax relief currently available for homes left empty because a person has moved into a hospital or care

home, or has died, or has moved to provide care to another. These are special circumstances where there is a justification for a home temporarily lying empty. Moreover, local authorities will be encouraged to use their existing powers to apply discretionary discounts in cases where homes are empty due to other justifiable circumstances - for example, hardship, fire or flooding. **a**

Deposit protection comes to Scotland



In the last edition of Property Insight (Spring 2011) arim reported on legislation introducing a tenancy deposit protection scheme in Scotland. Unlike England and Wales, there won't be any insurance-based schemes to protect Scottish tenancy deposits.

The approved provider will provide a free service to operate a custodial scheme where the money is handed over to the scheme to protect for the duration of the tenancy.

Three proposals have now been received by the Scottish Government and evaluation of these proposals is underway.

SafeDeposits Scotland Ltd; The LPS Scotland and My Deposits have all made formal bids to be the single provider for deposit protection in Scotland.

Safe Deposits Scotland Ltd is a consortium between the Scottish Association of Landlords, the Scottish Council for Voluntary Organisations, Shelter Scotland, the National Union of Students Scotland, The Dispute Service, the Association of Residential Letting Agents, the National Association of Estate Agents and the Royal Institution of Chartered Surveyors.

It will be supported by The Dispute Service, a provider of tenancy deposit protection services in England and Wales.

The LPS Scotland is run by the same company as The DPS in England and Wales.

My Deposits also runs an insurance backed scheme in England and Wales.

Deposit Protection – England & Wales



The Government has tabled amendments to the Localism Bill, which reaffirms some of the intentions of the tenancy deposit protection legislation in the Housing Act 2004. **The BPF (British Property Federation)** has worked with CLG and gained a couple of useful amendments. The first allows the deposit to be registered with a scheme within 30 days, rather than the current 14. The second means the minimum penalty that can be applied is reduced from three times the deposit, to the deposit amount. These amendments will only come into effect when passed at some future date; current law still applies. **a**

New planning regime affecting small properties let to sharers

Oxfordshire City Council

is the first authority in the country to implement a new planning regime that will require landlords to seek planning permission if they want to let a house to three or more unrelated tenants (the same criteria for mandatory licensing of houses in multiple occupancy (HMOs) in Scotland). Landlords will need to apply for a licence which will cost £470 plus an annual fee of £172. These rules come into affect from February next year and at the moment only affects properties in Oxford and the area controlled by the city council.



The local authority advise that this is justified by their belief that the area is being overrun by low quality HMOs. The fact that this legislation is likely to affect 4000 properties in Oxford would indicate that there is considerable extra revenue for the authority and arim will be closely following the situation to see if other local authorities follow suit. **a**





The Flood and Water Management Act 2010 was introduced to primarily implement recommendations following severe flooding in 2007. However, one of the key features is to also reduce 'bad debt' in the water industry. According to industry figures, in 2007, 19% of domestic water customers were in arrears with their water bill as compared to 5% of electricity customers and 3.7% of gas customers.

Section 45 of the Flood & Water Management Act 2010 contains provisions which require landlords to give information about their tenants to the relevant water company. A failure to do so will leave the landlord jointly and severally liable for the water bill alongside the tenants.

Originally this was due to be implemented in October 2011 but the water companies have yet to provide a

detailed requirement of data and agree a method by which that data can be reported. Furthermore, there is currently no tool to identify which water company covers which area. **So this has been postponed with the revised date not yet known.**

arim is currently reviewing processes to ensure we will be ready to comply with the new legislation. **a**

An Accounting Guide to Service Charges (part 2)

In the last edition of **Property Insight (Spring 2011)**, it was reported that an extensive and detailed guide for residential service charges had been published by the Institute of Chartered Accountants in England and Wales (ICAEW) in conjunction with ARMA and RICS. The final version has now been released and we are pleased to confirm that **arim** already adheres to all the points of best practice, as laid down by the guide. The one area that will be reviewed will be the format of service charge demands to enable increased transparency. This will benefit both freeholders and leaseholders alike.

arim will keep you informed of what changes are planned. **a**



And another postponement...

The Water Environmental Permitting (England and Wales) Regulations 2010 makes it a requirement to register any septic tank or small sewage treatment plant. It comes into force on 1st January 2012 in Wales but has been deferred in England following a review of how to simplify the registration.

In Scotland this came into force on 31st March 2011 under The Water Environment (Controlled Activities) (Scotland) Regulations 2010. **a**



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